



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Mr. Bobby K. Marks
President
Sam Houston State University
P.O. Box 2026
Huntsville, Texas 77341

OR98-1258

Dear Mr. Marks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115878.

The Sam Houston State University Police Department (the "department") received a request for the offense reports for two reported sexual assaults that occurred on the university campus on August 31, 1996 and September 3, 1997. You explain that you have released some of the requested information but assert that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents submitted.

Section 552.108, the "law enforcement exception," excepts from public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

First, we will address the reported sexual assault case that occurred on August 31, 1996. You have not explained how section 552.108 applies to except from public disclosure the information from this case. Thus, you may not withhold this information under section 552.108. However, because the offense report contains information about an alleged sexual assault, certain information is excepted from public disclosure by section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Clearly, a detailed description of an incident of aggravated sexual assault raises an issue of common-law privacy. *See Open Records Decision Nos. 260 (1980), 237 (1980)*. In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common-law privacy," and, therefore, any information tending to identify the

sexual assault victim should be withheld pursuant to common-law privacy. *See* Open Records Decision No. 393 (1983). Accordingly, you must withhold the information we have marked under section 552.101.

Additionally, we note that the offense report includes a medical record that is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Article 4495b protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Open Records Decision No. 598 (1991) at 2. The medical record, which we have marked, may only be released as provided by the MPA.

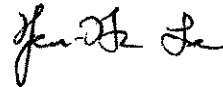
Lastly, the information submitted for our review contains references to social security numbers. Federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

As for the reported sexual assault that occurred on September 3, 1997, you state that the requested information relates to a pending criminal investigation and that release of the requested information would interfere with the prosecution of the case. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). However, because the offense report contains information about an alleged sexual assault, certain front page offense report information is excepted from disclosure under common-law privacy as encompassed by section 552.101 of the Government Code. In sexual assault cases, section 552.101 excepts from public disclosure certain information that is not normally excepted under section 552.108. Any information tending to identify the sexual assault victim and a detailed description of the incident of sexual assault should be withheld pursuant to common-law privacy. *See* Open Records Decision No. 393 (1983). Thus, except for certain basic information, the requested information is excepted from disclosure under common-law privacy and section 552.108(a)(1). Although section 552.108 authorizes you to withhold the requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref: ID# 115878

Enclosures: Marked documents

cc: Ms. Amy McCauley
The Houstonian
Sam Houston State University
P.O. Box 2299
Huntsville, Texas 77341-2299
(w/o enclosures)